IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

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S.B. Sales Tax Revision No. 77/2007

Assistant Commissioner, Commercial Taxes Deptt.,
Ward-II, Circle-H, Jaipur

Versus

M/s J.K. & Sons,
Barha Gangour Ka Rasta, Jaipur

Date of order :: August 21, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur for the petitioner-Revenue

BY THE COURT:

1. Heard learned counsel for the petitioner Revenue.

2. This revision petition is directed against the order of the Tax Board dated 30.10.2003, whereby the Tax Board upholding the order of the learned Deputy Commissioner (Appeals) dated 21.10.2002 found that

no case for imposition of penalty under Section 77(8) of the RST Act, 1994 was made out.

3. The assessing authority imposed the penalty of Rs. 21,000/- under the said provision in pursuance of a survey carried out at the business place of the respondent assessee on 03.06.2000, in which it was found that 280 diamond tools were found to be not recorded in the books of accounts and at the rate of Rs. 250/- per item, the unaccounted stock of Rs. 70,000/- was estimated and the aforesaid penalty of Rs. 21,000/- at the rate of 30% was imposed by the assessing authority. It is the case of the Revenue that the son of the proprietor Mr. Rajendra Jain, who was available on the spot at the time of survey, could not get the said material verified with the books of accounts.

4. Both the appellate authorities have found that neither it was established that the said son of the proprietor Shri Rajendra Jain was having any legal capacity to make such confessional statement on behalf of the respondent assessee that such goods were unaccounted nor in view of the fact that the assessing authority did not carry out any complete physical verification of the stocks found at the business

place of the respondent assessee, it could be said that such goods were unaccounted. Both the appellate authorities, therefore, concurrently found that on this basis, without establishing that such goods were unaccounted in the books of accounts, there was no proper reason for the assessing authority to impose the said penalty.

5. This court in its revisional jurisdiction does not find any question of law arising under Section 86 of the Act so as to require interference in the orders of the the appellate authorities. Consequently, this revision petition is dismissed with no order as to costs. A copy of this order be sent to the respondent assessee.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 7